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6 UNITED STATES DISTRICT COURT

7 IN AND FOR THE DISTRICT OF ARIZONA

8 HYDENTRA HLP INT. LIMITED, a
9 foreign corporation, d/b/a METART

10 Plaintiff,

11 vs.

12 PORN69.ORG; et al.,

13 Defendants.

14
15 No.: CV15-00451-PHX DGC

**ORDER GRANTING PLAINTIFF'S
EX PARTE MOTION FOR LEAVE
FOR ALTERNATIVE SERVICE**

16 Plaintiff seeks leave to serve Defendant Henry Jay by alternative means
17 pursuant to Fed.R.Civ.P 4(e)(1) and Defendant Nguyen Le Trang by alternative
18 means pursuant to Fed.R.Civ.P. 4(h)(2) and Fed.R.Civ.P. 4(f)(3). Doc. 21.

19 Fed.R.Civ.P. 4(e)(1) authorizes service of process in a manner following state law
20 for serving a summons in a court where service is made. Plaintiff has established that
21 Defendant Jay claims to reside in the State of Maine. Maine law permits electronic
22 service when the moving party has demonstrated due diligence in attempting to obtain
23 personal service of process, the physical location of the person to be served cannot
24 reasonably be ascertained, and the requested method and manner of service is reasonably
25 calculated to provide actual notice of the pendency of the action. Me.R.Civ.P. 4.

26 Plaintiff has attempted service at all available physical addresses, to no avail.

1 Plaintiff has investigated Defendant Jay's physical whereabouts and has been unable to
2 locate further physical addresses for Defendant Jay, as Defendant Jay has provided a fake
3 physical address. Plaintiff has obtained a working email address: henryjjay@gmail.com,
4 which is linked to Defendant Jay and from which Defendant Jay has communicated with
5 Plaintiff. The Court finds that service of Defendant Jay through the email address
6 henryjjay@gmail.com is appropriate and comports with due process.

7 Federal Rule of Civil Procedure 4(h)(2) authorizes service of process on a
8 foreign business entity in the manner prescribed by Rule 4(f) for individuals.

9 Federal Rule of Civil Procedure 4(f)(3) reads, in pertinent part:

10 (f) Serving an Individual in a Foreign Country. Unless federal
11 law provides otherwise, an individual-other than a minor, an
12 incompetent person, or a person whose waiver has been filed-
13 may be served at a place not within any judicial district of the
United States:

14 (1) by an internationally agreed means of service that is
15 reasonably calculated to give notice, such as those
16 authorized by the Hague Convention on Service Abroad
of Judicial and Extra Judicial Documents;

17 (2) if there is no internationally agreed means, or if an
18 international agreement allows but does not specify other
19 means, by a method that is reasonably calculated to give
notice:

20 (A) as prescribed by the foreign country's law for
21 service in that country in an action in its courts of
22 general jurisdiction;

23 (B) as the foreign authority directs in response to a
letter rogatory or letter of request; or

25 (C) unless prohibited by the foreign county's law, by;

26 (i) delivering a copy of the summons and of the

complaint to the individual personally; or

- (ii) using any form of mail that the clerk addresses and sends to the individual personally; or

(3) by other means not prohibited by international agreement, as the court orders. Fed. R. Civ. P. 4(f)(3).

Plaintiff seeks an order permitting service under Federal Rule of Civil Procedure 4(f)(3), which must be (1) directed by the court, and (2) not prohibited by international agreement. *Rio Properties, Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002).

In reviewing Rule 4(f)(3), the Ninth Circuit found that “[n]o other limitations are evident from the text.” *Id.* Rule 4(f) does not “create a hierarchy of preferred methods of service of process” and, “court -directed service under Rule 4(f)(3) is as favored as service available under Rule 4(f)(1) or 4(f)(2).” *Id.*, 284 F.3d at 1015. Under Rule 4(f)(3), a method of service must comport with constitutional notions of due process and must not violate any international agreement. *Id.*, 284 F.3d at 1015, 1016. A method of service comports with due process if it is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Id.* at 1016, 1017 (quoting *Mullane v. Cent. Hanover Bank & Trust*, 339 U.S. 306, 314 (1950)).

“[T]rial courts have authorized a wide variety of alternative methods of service including publication, ordinary mail, mail to the defendant’s last known address, delivery to the defendant’s attorney, telex, and most recently, email.” *Id.* at 1016. However, in effectuating service of process under Fed.R.Civ.P. 4(f) (3), a plaintiff must obtain prior court approval for the alternative method of service. *Brockmeyer v. May*, 383 F.3d 798, 806 (9th Cir. 2004).

1 Plaintiff brings a copyright infringement action against Defendant Nguyen Le
2 Trang seeking redress for Defendants' misappropriation of Plaintiff's copyrighted
3 works. In an attempt to determine the location of the owners and operators of the
4 web sites, Plaintiff conducted early discovery, serving subpoenas on known vendors
5 providing services for the web sites. Plaintiff discovered that these vendor accounts
6 are in the name of Nguyen Le Trang, with the following registered email:
7 henryjjay@gmail.com. The address information for Nguyen Le Trang was limited
8 to Vietnam. Plaintiff investigated the address provided to the vendor for Nguyen Le
9 Trang and determined that the address is not connected to Nguyen Le Trang. Thus,
10 Plaintiff has an email address for Nguyen Le Trang that was provided to the Vendor,
11 but has not obtained a valid physical address despite diligent efforts to find one.

12 In the absence of a valid address, Plaintiff cannot personally serve
13 Defendant in Vietnam. In view of the difficulties surrounding personal service
14 without the ability to determine an actual physical address, Plaintiff seeks an order
15 permitting service on Defendant Trang by email and has obtained an email address
16 for her. Plaintiff asserts that service through email comports with due process
17 because it is reasonably calculated to inform Defendant of the impending action, and
18 under the circumstances here, it is the only means of providing notice to Defendant.

19 In *Rio Properties*, the Ninth Circuit found that email was "the method most
20 likely to reach" a defendant who operated a website from Costa Rica with no
21 discoverable street address in either the United States or Costa Rica, and who only
22 provided an email address as a contact. 284 F.3d at 1017-118. Like *Rio Properties*,
23 Plaintiff argues Defendant is located in Vietnam and has a business that is conducted
24 through the internet. Furthermore, through its investigation, Plaintiff has been unable
25 to determine a physical address for Defendant and is, thus, unable to serve
26 Defendant by any other means.

1 Plaintiff also contends there is no authority that expressly provides or implies
 2 that email service is prohibited by international agreement, or otherwise, in
 3 Vietnam. Additionally, the decision in *Rio Properties* and other cases from
 4 district courts nationwide support the proposition that service by email is not
 5 generally prohibited by international agreement. *Bullex v. Yoo*, 2011 U.S. Dist.
 6 LEXIS 35628 (D. Utah Apr. 1, 2011) (finding email service appropriate upon
 7 defendant of unknown location in South Korea); *Bank Julius Baer & Co. Ltd v.*
 8 *Wikileaks*, 2008 WL 413737, at * 2 (N.D. Cal. 2008) (finding plaintiff had
 9 successfully demonstrated that service through email was not prohibited by an
 10 international agreement); *Williams-Sonoma Inc. v. Friendfinder Inc.*, 2007 1140639,
 11 at 2 (N.D. Cal. 2007) (concluding that there was no showing that service by email was
 12 prohibited by an international agreement).

13 The Court agrees and finds that service of Defendant Nguyen Le Trang
 14 through email is appropriate and comports with due process. Plaintiff has
 15 demonstrated that it has been unable to obtain a physical address for Defendant
 16 Nguyen Le Trang. Additionally, Plaintiff has shown that because Defendant
 17 conducts business through the internet, service through email will give Defendant
 18 sufficient notice and opportunity to respond. The Court also finds that issuing an
 19 order allowing service via email would not be prohibited by international
 20 agreement.

21 **IT IS ORDERED** that Plaintiff's *Ex Parte* Motion for Alternate Service on
 22 Defendants Henry Jay and Nguyen Le Trang (Doc. 21) is **granted**. These
 23 Defendants may be served at henryjjay@gmail.com. Service is valid upon
 24 transmission of an email to the Defendants.

25 Dated this 7th day of December, 2015.

26 

David G. Campbell
United States District Judge